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**Analysis of House Bill 5322 (As Passed House)**

**Topic:** Business corporations; effective date of documents filed with Administrator  
**Sponsor:** Representative Law  
**Co-sponsors:** Representatives Huizenga, Vander Veen, Baxter, Wenke, Taub and Tobocman  
**Committee:** House Commerce Committee  
Senate Economic Development, Small Business & Regulatory Reform

**Date Introduced:** October 18, 2005

**Date of Analysis:** December 7, 2005

**Position:** The Department of Labor & Economic Growth opposes the bill.

**Problem/Background:** This bill is part of a package of bills relating to business corporations. House Bill 5322 is the eighth of nine bills introduced in October 2005, each of which addresses a different section of the Business Corporation Act, MCL 450.1101 et seq. Mr. Cyril Moscow, Chair of the Business Corporation Subcommittee of the Business Law Section of the State Bar, testified in House committee that this package is the result of approximately four years of negotiation since the last rewrite to the Corporation Act. The intent is to (1) Revise Michigan law to make it consistent with other states' best practices, (2) Fix technicalities and oversights from the prior revision, and (3) Fix problems arising through court decisions and ambiguities in the law.

Section 151 of the Business Corporation Act requires the administrator, within 10 days, to provide to the submitter written notice of the refusal to file a document. Section 131 of the act provides that a document is effective when endorsed "Filed", unless a subsequent effective date is stated in the document. Frequently, it is important to corporations that a document be reviewed and filed very quickly. Such situations occur frequently in December when corporations are attempting to make changes to corporate structure for tax reasons. Also, in some business transactions, such as a merger, the transaction cannot be completed until the document is filed.

**Description of Bills:** This particular bill prescribes that documents submitted to the relevant state administrator become effective "when endorsed by the administrator, as of the date of receipt, unless a subsequent effective date, not later than 90 days after the date of delivery, is set forth in the document." Currently, the act states that the document is effective when it is endorsed.

**Arguments For:**

- 1) Businesses argue that they need to have a date certain for the filing of their corporation papers so that business may be carried out as expeditiously as possible.
- 2) At least two other states have similar provisions in their statutes that make the received date to be the filed date. Other states do use this practice, but it was not determined whether this is the result of a law or by administrative practice only.
- 3) The bill provides authority for the effective date of a document to be retroactive to the date of submission. This will benefit business in instances in which the Administrator is not able to complete the required review immediately upon receipt of the document or when the document must be returned for revisions.

**Arguments Against:**

- 1) HB 5322 would eliminate the progress made by passage of SB 664, Public Act 217 of 2005, which is effective on January 1, 2006. PA 217 resolved the need of businesses to have a date certain for filing of documents. It mandates that the department implement a procedure to accept documents by electronic mail or over the internet by January 1, 2007, and provides for expedited service. Expedited service allows the submitter to select the timeframe within which the document must be reviewed and obligates the department to commit resources to expedite review if the document is submitted with a request for expedited service and the expedited service fee is paid. Expedited fees are optional and will be paid only by those customers who desire to expedite approval of their documents beyond the current average, which is about 5 days. The expedited fees are expected to offset the revenue lost by the reduction in fees for profit corporations in SB 298, Public Act 212 of 2005. This statute lowered the fees paid by corporations for authorized stock.
- 2) Confusion will result if the provisions added by PA 217 are eliminated and the Business Corporation Act provides for backdating but the other entity statutes provide for filing by electronic mail or over the internet and for expedited service.
- 3) This language will not offer the relief that business wanted. If a business has a transaction and needs a document filed prior to completing the transaction, it is important to the business that the document be reviewed and the document endorsed "filed" before it proceeds with the transaction. The business generally needs a Certificate of Good Standing or proof of filing of the document in order for the transaction to go forward. For example, if a corporation is amending its articles to add additional authorized shares for a public offering the corporation cannot issue the new shares until the amendment is filed. If they submit the amendment today and want to do the public offering tomorrow, finding out late next week that it is being filed and will be backdated to the date it was received will not meet their business needs. By providing an effective date earlier than the actual approval date, the department will be unable to certify on the same date documents are filed because the document will not yet be reviewed. Only after the department can fulfill its statutory duties to review the document can it certify that documents comply, even if the "effective date" is later considered to be the date that the document was received.
- 4) Confusion may result as customers submit corporation papers, expecting that the application will be handled on the same day it is submitted because the effective date will be listed as of the received date. The department anticipates complaints from the public

when it cannot certify that a document is filed when the document is pending and not yet reviewed. In addition, any document that impacts the status of an entity or its name will prevent the issuance of a Good Standing Certificate until after the document is reviewed.

**Fiscal/Economic Impact:**

**Budgetary:** There may be significant financial loss to the department as a result of this bill because it provides no replacement for the revenue lost in SB 298 (PA 212) and eliminates the expedited fees provided for in SB 664 (PA 217 of 2005). The bill provides for backdating documents but provides no new personnel to provide quicker service and it will not produce the results desired.

The bill will require substantial changes to the computer programs and data base used by Bureau of Commercial Services. New tables, new fields, and new programs will need to be created to facilitate tracking received dates, "filed" dates, effective dates, pending names, assumed names and changes to existing programs will be needed for checking name availability, printing certificates, taking orders for Certificates of Good Standing, and all other production programs which currently rely of the entity name, ID number, "filed" date, and status. Additional staff or consultants will be needed by Department of Information Technology to revise and rewrite the programs. The costs could be substantial.

**Revenue:** No new revenue will be realized with this bill. Conversely, the department stands to lose revenue anticipated under SB 664 (2005 PA 217) if this bill passes.

**a) Department:** If this bill passes, it will raise expectations that the department will be required to provide expedited service for every document but it does not provide any resources to do so. It will eliminate the expedited fees that would otherwise be provided under 2005 PA 217 and may require other sources of revenue to be found to replace what will be lost by the adoption of this bill.

**b) State of Michigan:** More tax revenue may be realized if business transactions can take place earlier than expected but this bill does not facilitate transactions occurring earlier.

**c) Local Government:** More tax revenue may be realized if business transactions can take place earlier than expected but this bill does not facilitate transactions occurring earlier.

**Other Pertinent Information:** The Business Corporation Subcommittee of the Business Law Section of the State Bar supports this bill. At the December 3, 2005, meeting of the Business Law Section Council they discussed asking the sponsor to withdraw the bill in light of the passage of SB 664 and will be contacting the sponsor.

The department has been told by House staff that although the bill passed the House it is expected to die in the Senate.

**Administrative Rules Impact:** There is no administrative rules impact.